

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JUNIOR D. HIGGINS
Claimant

VS.

RYDER INTEGRATED LOGISTICS
Respondent
Self-Insured

)
)
)
)
)
)
)
)
)
)

Docket No. 1,016,867

ORDER

Claimant requests review of the July 6, 2004 preliminary hearing Order entered by Administrative Law Judge (ALJ) Bryce D. Benedict.

ISSUES

Judge Benedict denied claimant's request for medical treatment and temporary total disability compensation, finding claimant failed to prove that he suffered accidental injury arising out of and in the course of his employment with respondent. Claimant contends this was error and that his claim for preliminary benefits should be granted. Conversely, respondent asks that the ALJ's Order be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and having considered the briefs of the parties, the Board finds that the ALJ's order should be affirmed.

Claimant is a truck driver with a history of back problems. He testified that on Friday, April 23, 2004, while unhooking his trailer from his tracker unit, he felt a strain and burn in his low back and right hip area. He did not report this to anyone. Instead, he completed his regular job duties and went home at the usual time.

On the following Sunday afternoon claimant was sitting outside in his yard when he felt a cramping in his right leg. When he got up his right leg was numb causing him to fall to the ground. Claimant's wife and son assisted him into the house. Later that day,

claimant's wife called claimant's supervisor, Dwight Thiessen, and advised him that claimant would most likely not be at work the next day. Mr. Thiessen testified that claimant's wife said that claimant "over did it today" and would not be in Monday.¹ There was no mention of a work-related injury.

On Monday, April 26, 2004, claimant called his supervisor, Mr. Thiessen, and advised that his condition had not improved and that he would not be able to come to work. Again, there was no mention of a work-related accident.

That same Monday, claimant went on his own to a chiropractor for treatment. Claimant's wife completed the patient information sheet at the chiropractor's office. In answer to the question, "[i]s the condition due to injury or sickness arising out of the employment?" Mrs. Higgins marked, "no."² She also indicated that the date of onset of claimant's condition was Sunday, April 25, 2004.

After seeing the chiropractor, claimant called Mr. Thiessen again and this time he reported that his back injury was work-related. He was then asked to complete an accident report, which he did, on Tuesday, April 27, 2004, wherein he described the Friday, April 23, 2004 accident.

Claimant's wife denied telling Mr. Thiessen that her husband had over done it that weekend when she spoke to him by telephone on Sunday, April 25, 2004. Rather, she testified that it was Mr. Thiessen who used that term and she did not think it significant enough to clarify the matter. Both claimant and Mrs. Higgins said that claimant did not do anything unusual or strenuous on either Saturday or Sunday before the onset of claimant's symptoms down his right leg. Furthermore, claimant's wife testified that she misunderstood the question at the chiropractor's office and was not thinking of claimant's activities the previous Friday as an "accident."

In his Order, Judge Benedict specifically noted that he "found Mr. Thiessen to be a credible witness; Mrs. Higgins was not."³ The Board generally gives some deference to an ALJ's determination of credibility when the ALJ had the opportunity to observe the witnesses testify in person before him. Furthermore, it is the claimant that bears the burden of proof in these matters.⁴ The Board has reviewed the testimony and, like the ALJ, concludes that claimant has failed to meet his burden of proving that he suffered an

¹ P.H. Trans. at 52; Resp. Ex. B.

² *Id.* at 18; Resp. Ex. A.

³ Order (July 6, 2004).

⁴ K.S.A. 44-501(a) and K.S.A. 44-508(g).

accident at work on April 23, 2004. Accordingly, the ALJ's Order denying benefits is affirmed.

As provided by the Act, preliminary hearing findings are not binding but are subject to modification upon a full hearing on the claim.⁵

WHEREFORE, it is the finding of the Board that the Order entered by Administrative Law Judge Bryce D. Benedict dated July 6, 2004 is affirmed.

IT IS SO ORDERED.

Dated this _____ day of October 2004.

BOARD MEMBER

c: Chris A. Clements, Attorney for Claimant
Clifford K. Stubbs, Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁵K.S.A. 44-534a(a)(2).